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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2792

Introduced by Assembly Member Bonta
(Principal coauthor: Assembly Member Alejo)
(Principal coauthor: Senator Leno)
(Coauthor: Assembly Member Lopez)

February 19, 2016

An act to add Chapter 17.2 (commencing with Section 7283) to Division 7 of Title 1 of the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2792, as amended, Bonta. Local law enforcement agencies: federal immigration policy ~~enforcement~~. *enforcement: ICE access.*

Existing federal law authorizes issuance of an immigration detainer that serves to advise another law enforcement agency that the federal department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. Existing federal law provides that the detainer is a request that the agency advise the department, prior to release of the alien, in order for the department to arrange to assume custody in situations when gaining immediate physical custody is either impracticable or impossible.

Existing law, commonly known as the TRUST Act, prohibits a law enforcement official, as defined, from detaining an individual on the basis of a United States Immigration and Customs Enforcement hold after that individual becomes eligible for release from custody, unless, at the time that the individual becomes eligible for release from custody, certain conditions are met, including, among other things, that the individual has been convicted of specified crimes. Existing law defines specified terms for purposes of these provisions.

This bill, the Transparent Review of Unjust Transfers and Holds (TRUTH) Act, would authorize a local law enforcement agency to participate in a United States Immigration and Customs Enforcement (ICE) immigration enforcement program only if it enters into a memorandum of understanding (MOU) with the governing body of the political subdivision in which the law enforcement agency is located, or the governing body adopts a binding policy directive, as specified, that describes the terms and conditions pursuant to which the agency will participate in the immigration enforcement program. The bill would authorize the MOU or policy to take effect 30 days after ratification by the governing body, and would authorize the MOU or policy to be valid for a period not exceeding 3 years. *provide the United States Immigration and Customs Enforcement (ICE) with access to an individual if certain conditions are met, as provided.* The bill would require *that* the MOU or policy and any records related to its development *ICE access* be public records for purposes of the California Public Records Act. The bill would require the local governing body to hold a community forum or forums, as specified, to provide information to the public about the policy under consideration, and to receive and consider public comment before entering into the MOU or policy. The bill would require the MOU or policy to require compliance with the TRUST Act, prohibit law enforcement responses to ICE notification or transfer requests except in those situations in which a law enforcement official would have discretion to detain an individual, requiring compliance with local ordinances or policies that limits law enforcement responses to ICE notifications, or detainer or transfer requests, prohibit execution of an ICE detainer or transfer request, a plan to ensure that ICE does not have access to individuals protected from continued detention on the basis of an immigration hold, and a plan to ensure that any individual who is not protected from continued detention is served a copy of any ICE detainer, transfer, or notification request issued for him or her, as specified. *ICE access, which shall*

include a report by the local law enforcement agency about its policies and practices regarding ICE access to individuals. By requiring these local agencies to comply with these requirements, this bill would impose a state-mandated local program. The bill would also prohibit police and security departments of the California State University, community colleges, schools, and school districts from ~~participating in any ICE immigration enforcement program~~. *providing ICE access to any individual.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known, and may be cited, as the
- 2 Transparent Review of Unjust Transfers and Holds (TRUTH) Act.
- 3 SEC. 2. (a) Transparency and accountability are essential
- 4 minimum requirements for any collaboration between state and
- 5 federal agencies.
- 6 (b) Recent immigration enforcement programs sponsored by
- 7 the United States Immigration and Customs Enforcement (ICE)
- 8 agency have suffered from a lack of transparency and
- 9 accountability.
- 10 (c) For example, a federal judge found that ICE “went out of
- 11 [its] way to mislead the public about Secure Communities,” a
- 12 deportation program in which ICE collaborated with local law
- 13 enforcement agencies to identify people for deportation.

1 (d) The Legislature further found that Secure Communities
2 harmed community policing and shifted the burden of federal
3 immigration enforcement onto local law enforcement agencies.

4 (e) Although ICE has terminated the Secure Communities
5 program, it continues to promote a number of similar programs,
6 including the Priority Enforcement Program, the 287(g) Program,
7 and the Criminal Alien Program.

8 (f) The Priority Enforcement Program has many similarities to
9 Secure Communities, including the checking of fingerprints for
10 immigration purposes at the point of arrest; the continued use of
11 immigration detainers, which have been found by the courts to
12 pose constitutional concerns; and the reliance on local law
13 enforcement to assist in immigration enforcement.

14 (g) Just as with Secure Communities, numerous questions have
15 been raised about whether ICE has been transparent and
16 accountable with respect to its current deportation programs.

17 (h) This bill seeks to address the lack of transparency and
18 accountability by ensuring that all ICE deportation programs that
19 depend on entanglement with local law enforcement agencies in
20 California are subject to meaningful public oversight and meet
21 certain minimum standards.

22 SEC. 3. Chapter 17.2 (commencing with Section 7283) is added
23 to Division 7 of Title 1 of the Government Code, to read:

24
25 CHAPTER 17.2. STANDARDS FOR PARTICIPATION IN UNITED
26 STATES IMMIGRATION AND CUSTOMS ENFORCEMENT PROGRAMS
27

28 7283. For purposes of this chapter, the following terms have
29 the following meanings:

30 (a) "Community forum" includes, but is not limited to, any
31 regular meeting of the local governing body that is open to the
32 public, where the public may provide comment, is in an accessible
33 location, and is noticed at least 30 days in advance.

34 (b) ~~"Detainer"~~ "Hold request" means a federal Immigration and
35 Customs Enforcement (ICE) request that a local law enforcement
36 agency maintain custody of an individual currently in its custody
37 beyond the time he or she would otherwise be eligible for release
38 in order to facilitate transfer to ICE and includes, but is not limited
39 to, Department of Homeland Security (DHS) Form I-247D.

1 (c) “Governing body” with respect to a county, means the county
2 board of supervisors.

3 ~~(d) “ICE immigration enforcement program” means any program~~
4 ~~or practice by which the United States Immigration and Customs~~
5 ~~Enforcement (ICE) agency works with local law enforcement~~
6 ~~agencies, or police and security departments of the University of~~
7 ~~California, California State University, community colleges,~~
8 ~~schools, and school districts to detect, detain, transfer, or share~~
9 ~~information about individuals who allegedly are noncitizens or~~
10 ~~who have committed civil immigration violations, or to station~~
11 ~~ICE agents in local jails, or to interview individuals in local jails~~
12 ~~about alleged civil immigration violations, or to issue or respond~~
13 ~~to detainer, notification, or transfer requests, and includes, but is~~
14 ~~not limited to, the Priority Enforcement Program, the 287(g)~~
15 ~~Program, and the Criminal Alien Program.~~

16 (d) “ICE access” means, for the purposes of civil immigration
17 enforcement, including when an individual is stopped with or
18 without their consent, arrested, detained, or otherwise under the
19 control of the local law enforcement agency, all of the following:

20 (1) Responding to an ICE hold, notification, or transfer request.

21 (2) Providing notification to ICE in advance of the public that
22 an individual is being or will be released at a certain date and
23 time through data sharing or otherwise.

24 (3) Providing ICE non-publicly available information or access
25 to non-publicly available computer databases and jail logs
26 containing release dates, home addresses, or work addresses.

27 (4) Allowing ICE to interview an individual.

28 (5) Providing ICE information regarding dates and times of
29 probation or parole check-ins.

30 (e) “Local law enforcement agency” means any agency of a
31 city, county, city and county, special district, or other political
32 subdivision of the state that is authorized to enforce criminal
33 statutes, regulations, or local ordinances; or to operate jails or to
34 maintain custody of individuals in jails; or to operate juvenile
35 detention facilities or to maintain custody of individuals in juvenile
36 detention facilities; *facilities; or to monitor compliance with*
37 *probation or parole conditions.*

38 (f) “Notification request” means an Immigration and Customs
39 Enforcement request that a local law enforcement agency inform
40 ICE of the release date and time *in advance of the public* of an

1 individual in its custody and includes, but is not limited to, DHS
2 Form I-247N.

3 (g) ~~“Small city” means a city with a population of 100,000 or~~
4 ~~less, as determined by the annual city total population rankings by~~
5 ~~the Demographic Research Unit of the Department of Finance.~~

6 (h)

7 (g) “Transfer request” means an Immigration and Customs
8 Enforcement request that a local law enforcement agency facilitate
9 the transfer of an individual in its custody to ICE, and includes,
10 but is not limited to, DHS Form I-247X.

11 7293.1. (a) ~~A local law enforcement agency may participate~~
12 ~~in an ICE immigration enforcement program only if the law~~
13 ~~enforcement agency and the governing body of the political~~
14 ~~subdivision in which the law enforcement agency is located enter~~
15 ~~into a memorandum of understanding (MOU) in the case of a local~~
16 ~~law enforcement agency headed by an elected official, or the~~
17 ~~governing body adopts a binding policy directive, in the case of a~~
18 ~~local law enforcement agency headed by an employee of the~~
19 ~~political subdivision hired and fired by the governing body, that~~
20 ~~describes the terms and conditions pursuant to which the local law~~
21 ~~enforcement agency will participate in the immigration~~
22 ~~enforcement program. The MOU or policy shall only take effect~~
23 ~~30 days after ratification of the MOU or policy by vote of the~~
24 ~~governing body of the political subdivision in which the law~~
25 ~~enforcement agency is located.~~

26 (b) ~~The MOU or policy and any records related to the~~
27 ~~development of the MOU or policy, including, but not limited to,~~
28 ~~records of communication with ICE, shall be public records for~~
29 ~~purposes of the California Public Records Act (Chapter 3.5~~
30 ~~(commencing with Section 6250) of Division 7 of Title 1).~~

31 (c) ~~An MOU or policy enacted under this chapter shall be valid~~
32 ~~for a period not exceeding three years. Renewal of an MOU or~~
33 ~~policy requires compliance with all of the provision of this chapter,~~
34 ~~including the public input process described in subdivision (d) and~~
35 ~~an evaluation of whether the conditions described in subdivision~~
36 ~~(e) have been fully implemented. An MOU or policy may be~~
37 ~~renewed for a period not exceeding three years. An MOU or policy~~
38 ~~may remain in effect for a period not exceeding six months~~
39 ~~following the two-year period if the renewal process began at least~~
40 ~~three months before expiration of the initial three-year period.~~

1 ~~(d) Before entering into an MOU or policy, the local governing~~
2 ~~body shall hold at least three community forums that are open to~~
3 ~~the public on different days, in accessible locations, and with at~~
4 ~~least 30 days notice to the public to provide information to the~~
5 ~~public about the policy under consideration and to receive and~~
6 ~~consider public comment, except that the local governing body of~~
7 ~~a small city shall be required to hold only one forum. The~~
8 ~~community forums shall be held pursuant to the Ralph M. Brown~~
9 ~~Act (Chapter 9 (commencing with Section 54950) of Part 1 of~~
10 ~~Division 2 of Title 5).~~

11 ~~(e) An MOU or policy enacted under this chapter shall be~~
12 ~~incorporated into any contract for the operation of a~~
13 ~~government-owned detention facility entered into by a local law~~
14 ~~enforcement agency or the governing body of the political~~
15 ~~subdivision in which the law enforcement agency is located.~~

16 ~~7293.2. (a) An MOU or policy entered into pursuant to this~~
17 ~~chapter shall include all of the following:~~

18 ~~(1) A provision requiring compliance with Sections 7282 and~~
19 ~~7282.5, commonly known as the TRUST Act.~~

20 ~~(2) A prohibition on law enforcement responses to ICE~~
21 ~~notification or transfer requests except in those situations in which~~
22 ~~a law enforcement official would have discretion to detain an~~
23 ~~individual on the basis of an immigration hold pursuant to Section~~
24 ~~7282.5.~~

25 ~~(3) A provision requiring compliance with any local ordinance~~
26 ~~or policy that limits law enforcement responses to ICE~~
27 ~~notifications, or detainer or transfer requests.~~

28 ~~(4) A plan to ensure that ICE does not have access to an~~
29 ~~individual protected from continued detention under Section~~
30 ~~7282.5, including, but not limited to, notification in advance of~~
31 ~~the public that the individual is being or will be released at a certain~~
32 ~~date and time through data sharing or otherwise, the ability to~~
33 ~~interview the individual, and access to nonpublicly available~~
34 ~~personal identifying information, including work or home~~
35 ~~addresses, of the individual.~~

36 ~~(5) A plan to ensure that any individual not protected from~~
37 ~~continued detention under Section 7282.5 is served with a copy~~
38 ~~of any ICE detainer, transfer, or notification request issued for him~~
39 ~~or her and is provided a written consent form in advance of any~~
40 ~~interview with ICE that explains the purpose of the interview, that~~

1 the interview is voluntary, and that he or she may decline to be
2 interviewed or may choose to be interviewed only with his or her
3 attorney present.

4 (b) ~~Unless otherwise prohibited by a local ordinance, law~~
5 ~~enforcement policy, or an MOU or policy entered into pursuant~~
6 ~~to this chapter, nothing in this chapter shall prohibit a local law~~
7 ~~enforcement agency from responding to an ICE notification or~~
8 ~~transfer request if a law enforcement official would have discretion~~
9 ~~to detain an individual on the basis of an immigration hold pursuant~~
10 ~~to Section 7282.5.~~

11 7293.3. (a) ~~Notwithstanding any other provision of this chapter,~~
12 ~~police and security departments of the California State University,~~
13 ~~California Community Colleges, schools, and school districts shall~~
14 ~~not participate in any ICE immigration enforcement program.~~

15 (b) ~~The University of California is requested to comply with~~
16 ~~this section.~~

17 7283.1. (a) *A local law enforcement agency shall have the*
18 *discretion to provide ICE access to an individual if all of the*
19 *following conditions are met:*

20 (1) *The agency would have discretion to detain the individual*
21 *on the basis of an immigration hold request pursuant to Section*
22 *7282.5.*

23 (2) *The agency would not violate any local law or policy by*
24 *providing access to the individual.*

25 (3) *The individual has been served with a copy of any ICE hold,*
26 *transfer, or notification request issued for him or her and has been*
27 *provided with a written consent form in advance of any interview*
28 *with ICE that explains the purpose of the interview, that the*
29 *interview is voluntary, and that he or she may decline to be*
30 *interviewed or may choose to be interviewed only with his or her*
31 *attorney present.*

32 (b) *If a local law enforcement agency provides ICE with*
33 *notification that an individual is being, or will be, released on a*
34 *certain date, the local law enforcement agency shall promptly*
35 *provide the same notification in writing to the individual and to*
36 *his or her attorney or to one additional person who the individual*
37 *shall be permitted to designate.*

38 (c) *All records relating to ICE access provided by local law*
39 *enforcement agencies, including all communication with ICE about*
40 *that access shall be public records for purposes of the California*

Public Records Act, except that, where otherwise permitted under the Public Records Act, personal identifying information may be redacted prior to public disclosure.

(d) The local governing body of any county, city, or city and county in which a local law enforcement agency has provided ICE access to an individual during the last year shall hold at least one community forum every year that is open to the public, in an accessible location, and with at least 30 days' notice to provide information to the public about ICE's access to individuals and to receive and consider public comment. At the community forum, the local law enforcement agency shall report to the local governing body about its policies and practices regarding ICE access to individuals and its compliance with this chapter. As part of this report, the local law enforcement agency shall provide the governing body with any and all data it maintains regarding the number and demographic characteristics of individuals to whom the agency has provided ICE access, the date ICE access was provided, and whether the ICE access was provided through a hold, transfer, or notification request or through other means.

7283.2. Nothing in this chapter shall be construed to provide, expand, or ratify the legal authority of any state or local law enforcement agency to detain an individual based upon an ICE hold request.

7283.3. (a) Notwithstanding any other provision of this chapter, police and security departments of the California State University, California Community Colleges, schools, and school districts shall not provide ICE access to any individual.

(b) The University of California is requested to comply with this section.

SEC. 4. The Legislature finds and declares that Section 2 of this act, which adds Chapter 17.2 (commencing with Section 7283) to Division 7 of Title 1 of the Government Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

1 By requiring public meetings relating to the manner in which
2 local law enforcement entities cooperate with federal authorities
3 in enforcing federal immigration laws and making related
4 documents open to public inspection this act furthers the purposes
5 of paragraph (7) of subdivision (b) of Section 3 of Article I of the
6 California Constitution.

7 SEC. 5. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district under this act would result from a legislative mandate that
11 is within the scope of paragraph (7) of subdivision (b) of Section
12 3 of Article I of the California Constitution.